IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5042 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHANDUBHAI BHAILALBHAI MAKWANA

Versus

SUPERTENDING ENGINEER

Appearance:

1. Special Civil Application No. 5042 of 2003

MR JIGAR P RAVAL for Petitioner No. 1

MR MD PANDYA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 24/08/2004

ORAL JUDGEMENT

1.0. The petitioner by way of this petition has challenged the judgment and award of the Labour Court, Vadodara dated 21st January, 2003 in Reference [L.C.V.]

No.419 of 1991, whereby the Reference of the petitioner was rejected and the order passed under Rule 113 by the respondent was upheld.

2.0. The short facts of the case as they emerge from the record of the petition are that at the relevant time the petitioner was working as helper with the respondent-Board on permanent post. The petitioner submitted that due to ill health and disturbed mental condition, he was not able to attend the service from 14th August, 1989. It is the case of the petitioner that though he had informed the higher officer and had also produced medical certificate at the time of resuming his duty, the respondent-Board without following the due procedure dismissed him from the service on 14th May, 1990.

2.1. Being aggrieved by the order of dismissal, the petitioner raised industrial dispute, which was ultimately referred to the Labour Court for adjudication. Before the Labour Court, both the parties adduced evidence. After appreciating the material produced before it, the Labour Court rejected the Reference with the aforesaid direction. It is this award which is now under challenge in this petition.

2.2. As against that the say of the respondent-Board is that inspite of issuing several notices to the petitioner, the petitioner had not resumed his duty. It is the case of the respondent-Board that as a last resort i.e. after giving him final notice, order under Rule 113 was passed.

3.0. I have heard the learned advocate for the respective parties and have perused the relevant record. The main contention which was raised before the Labour Court is that the order is passed without following the principles of natural justice and without conducting any departmental inquiry. It appears that the Labour Court while dealing with the said contention in para 10 has given finding to the effect that though reasonable opportunity was given, the petitioner had not resumed his duty, which was negligence on the part of the petitioner. The Labour Court has also specifically given finding that though the petitioner was having the knowledge of Rule and Regulations of the respondent-Board, he proceeded on leave without informing his higher officer. Therefore, in my view, the said finding of the Labour Court is just and proper and no interference is called for under Article 227 of the Constitution of India.

3.1. The second contention which is raised by the learned advocate for the petitioner is that in view of the decision of this Court in the case of Gujarat Electricity Board v. Narayanbhai Kalubhai Bhamre reported in 2002 (3) G.L.R. p. 2717, wherein it has been held that in case of termination simpliciter provisions of Section 25-F of the Industrial Disputes Act is not required to be followed and in case of punitive termination, principles of natural justice are required to be followed. However, in the present case, the Labour Court has come to the conclusion that sufficient opportunity was given to the petitioner and the order passed by the Labour Court is just and proper.

3.2. In the case of Gujarat Electricity Board v. Narayanbhai Kalubhai Bhamre (supra) in para 15 this Court also observed as under :-

> "15. It is also pertinent to note that this Court is having very limited powers under Article 227 of the Constitution of India. This Court cannot act as an appellate authority. However, it is settled position of law that the powers of this Court are very limited while examining the legality and validity of the award passed by the Labour Court. The view taken by the Apex Court in Indian Overseas bank v. I.O.B. Staff Canteen Workers' Union & Anr., reported in 2000 S.C.C. (L.& S.) 471, the Apex Court had held that while exercising the powers under Article 226 an 227 of the Constitution, interference with pure finding of fact and re-appreciation of the evidence is held to be impermissible. The High Court does not exercise appellate jurisdiction under Article 226. Even insufficiency of evidence or that another view is possible, it is held that no ground to interfere with the findings of the Industrial Tribunal. Recently also, the Apex Court has considered this aspect in case of Sagarbhai M. Siddiq & Anr. v. Ramesh S. Handkare, reported in 2001 (8) S.C.C. p.477, the Apex Court has held that scope of powers of High Court is concerned not with the decision of the lower Court/ Tribunal but with its decision making process. High Court, must ascertain whether such Court or

> Tribunal had jurisdiction to deal with a particular matter and whether the order in question is vitiated by procedural irregularity, then only High Court can interfere with, otherwise not."

3.3. Thus, in view of the aforesaid decision, in my opinion, this Court will not disturb the finding of the Labour Court under Article 227 of the Constitution of India.

3.4. Further it may be noted that in the present case, accepting the guilt before the Labour Court, the petitioner had requested the Labour Court to exercise powers under Section 11-A of the Industrial Disputes Act but considering the loss suffered to the respondent-Board, the Labour Court had thought it fit not to exercise powers under Section 11-A of the Industrial Disputes Act. Therefore, in my opinion, looking to the facts and circumstances of the case, no error is committed by the Labour Court.

4.0. In the result, no case is made out for interference. Hence, the petition is dismissed. Rule is discharged with no order as to costs.

[K.S. JHAVERI, J.]

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